

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES – GENERAL**

Case No.: CV 16-02129-SJO (RAOx) Date: September 19, 2017  
Title: Cory Spencer, et al. v. Lunada Bay Boys, et al.

Present: The Honorable **ROZELLA A. OLIVER, U.S. MAGISTRATE JUDGE**

Sandra L. Butler  
Deputy Clerk

N/A  
Court Reporter / Recorder

Attorneys Present for Plaintiff(s):

Attorneys Present for Defendant(s):

N/A

N/A

**Proceedings:** (In Chambers) **MINUTE ORDER SETTING BRIEFING SCHEDULE  
RE MOTION FOR SANCTIONS [425]**

The Court is in receipt of the Joint Status Report filed by Defendant Sang Lee (Dkt. No. 458) and the Joint Status Report filed by Defendants Charlie and Frank Ferrara (Dkt. No. 459).

With respect to Defendant Lee, counsel for Plaintiffs and Defendant Lee shall meet and confer regarding the additional analysis being performed on Defendant Lee's phone by September 22, 2017. If additional text messages are recovered that would resolve the pending Motion for Sanctions, Plaintiffs and Defendant Lee shall file a joint status report by September 26, 2017. If Plaintiffs intend to pursue their Motion for Sanctions following the update at the meet and confer with Defendant Lee, Plaintiffs and Defendant Lee shall follow the briefing schedule set forth below.<sup>1</sup>

With respect to Defendant Frank Ferrara, there are nine text messages exchanged with Defendant Sang Lee that have been requested by Plaintiffs but not produced. *See* Dkt. No. 459. According to Frank Ferrara's forensic analyst, these messages are not recoverable. *Id.* With respect to Defendant Charlie Ferrara, there are at least six text messages with Defendant Sang Lee that appear to be unavailable because Defendant Charlie Ferrara changed phones. *See id.* Defendant Charlie Ferrara is also awaiting a further response from his cellular service provider regarding other records. Counsel for Plaintiffs and Defendant Charlie Ferrara shall meet and confer by September 22, 2017 as to whether any further records have been obtained by

<sup>1</sup> The parties do not need to file a joint status report on September 26, 2017 if Plaintiffs intend to pursue their Motion for Sanctions.

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Defendant Charlie Ferrara. Because it appears that there are text messages that are not recoverable or are unavailable from both Defendant Frank Ferrara and Defendant Charlie Ferrara, Plaintiffs and Defendants Frank and Charlie Ferrara shall follow the briefing schedule set forth below.

Plaintiffs shall file their brief(s) in support of sanctions against Defendants Sang Lee, Frank Ferrara and Charlie Ferrara by **September 28, 2017**. The brief(s) shall include, but not be limited to, the following:

- The text messages and/or data that Plaintiffs contend are lost, destroyed or unrecoverable for each Defendant, with as much specificity as reasonably possible.
- The application of Federal Rule of Civil Procedure 37(e) to the dispute as to each Defendant. If Plaintiffs contend that Rule 37(e) does not apply, Plaintiffs shall present their position regarding sanctions under both the Rule 37(e) standard and the standard Plaintiffs believe applies to this dispute.
- To the extent this information is available to Plaintiffs, whether it appears that other text messages and/or data from around the same time period as the unrecoverable text messages and/or data have been recovered or are also unrecoverable, for each Defendant.
- The requested sanction(s) for each Defendant, with any lesser sanction(s) Plaintiffs would like the Court to consider.

Defendants Sang Lee, Frank Ferrara and Charlie Ferrara shall file their briefs in opposition to the motion for sanctions by **October 5, 2017**. The briefs shall include, but not be limited to, the following:

- The application of Federal Rule of Civil Procedure 37(e) to the dispute. If a defendant contends that Rule 37(e) does not apply, that defendant shall present his position regarding sanctions under both the Rule 37(e) standard and the standard he believes applies to this dispute.
- An explanation and/or declaration as to why the text messages and/or data specified by Plaintiffs are unrecoverable, or, if a defendant contends the text messages and/or data are recoverable, why that defendant has not produced the text messages and/or data.
- Whether other text messages and/or data from around the same time period as the unrecoverable text messages and/or data have been recovered or are also unrecoverable.
- Any lesser sanction(s) that the defendant would like for the Court to consider.

